

NASDOH Issue Brief

Waivers and Program Flexibilities: Lessons from COVID-19

INTRODUCTION

Federal health and social programs have a profound effect on the wellbeing of individuals and families. The importance of these programs is amplified in any health emergency, and likewise in an economic downturn, where they serve as lifelines and provide counter-cyclical stimulus for the economy. The COVID-19 pandemic is unprecedented in that it is simultaneously a public health and an economic emergency, underscoring the importance of programs addressing both health and underlying social and economic determinants of health.

The COVID-19 pandemic illustrates the role of Federal programs in an emergency and shows how important it is for these programs to be flexible enough to adapt to changing circumstances. The pandemic provides an opportunity, however unwelcome, to learn how programs can adapt – not only in preparation for future health or economic emergencies, but also to improve the performance and efficiency of programs that serve the needs of individuals and families every day.

IMPORTANCE OF PROGRAM FLEXIBILITIES IN COVID-19 TO MEET SOCIAL NEEDS

Social determinants of health are conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. Federal programs address many of the underlying conditions that can influence health by meeting social needs such as housing (e.g., through the housing choice voucher program – previously called section 8 vouchers – and homelessness prevention programs); nutrition (e.g., WIC and SNAP); and income (e.g., TANF, child support, unemployment insurance, and the Earned Income Tax Credit). Additionally, the Federal government directly or indirectly provides health coverage for 37.4% of Americans (e.g., through Medicare, Medicaid, SCHIP, and private insurance subsidies under the Affordable Care Act).¹

Many of these programs address specific needs rather than taking a holistic approach, and they are often implemented under statutory authority that reflects a delicate balance of policy and political considerations. Accordingly, many are inflexible, and operate in relative isolation. While waivers and

¹Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS). September 2020. Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, 2019. <https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur202009-508.pdf>.

program flexibilities are sometimes afforded through authorizing or appropriations language, few Federal agencies have the broad authority that would enable them to adapt to new situations by launching demonstrations or natural experiments to aid program redesign. Many programs are implemented by states under Federal rules, and most agencies have only limited ability to provide states with flexibility. Many of these limitations were amplified in the COVID-19 emergency, when the underlying challenge of addressing the social, health, and economic consequences of the pandemic required rapid action to adapt programs and interventions in order to address changing circumstances.

The magnitude of the COVID-19 pandemic provided clear motivation for agencies to use any and all existing flexibilities, and for Congress to enact new authorities. These steps included pushing existing administrative flexibilities to the limits, using authorities to grant temporary waivers, legislative enactment of new program rules, and new programs designed specifically for the COVID-19 environment (e.g., the Paycheck Protection Program). These mechanisms are discussed further below. Examples of the expansive steps taken in 2020 include:

- Changes in health benefits to accommodate new or altered treatment modalities, such as waivers that allow more use of telehealth services
- Administrative flexibility for housing programs to waive requirements that require face-to-face contact for reverification of income
- Limits on evictions, including employment of unused preexisting authorities²
- Flexibility in administration of nutrition programs, such as the sites in which meals are served and the waivers on time limits for benefits
- Temporary expansion of unemployment benefits

The appendix below highlights some specific examples of waivers and program flexibilities employed to respond to COVID-19.

KEY ISSUES IN MAINTAINING AND EXPANDING COVID-19 WAIVERS AND PROGRAM FLEXIBILITIES

The COVID-19 experience suggests that waivers and program flexibilities, applied appropriately, can help overcome some of the limitations of Federal health and social services programs that persist even when we are not in a national pandemic. We believe that many of these program changes can be extended for further evaluation, or should be retained permanently. However, the following considerations should be observed to ensure these flexibilities lead to effective and efficient approaches to address SDOH, and to guarantee that accountability remains.

Identifying the appropriate decision-makers and mechanisms

There are many pathways toward program flexibility and mechanisms that might better integrate efforts to address SDOH. These pathways differ along multiple dimensions including the locus of decision-making

²Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS). September 2020. HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>

(e.g., Congress, Federal executive agencies, state agencies); the administrative mechanism (e.g., state option to exercise existing flexibility; Federal agency authority to approve waivers under Federal law, as in Medicaid 1115 waivers); and the extent of the flexibility provided (e.g., changes in eligibility or enrollment; changes in program design; changes in accountability or reporting requirements).

Ensuring appropriate “guardrails”

To ensure that waivers and flexibilities do not undermine the goals of the program, it is vital to maintain guardrails. Federal programs addressing SDOH are the product of complex policy and political compromises, and many existing program rules are designed to prevent agencies or states from straying from those agreements. Where executive agencies are allowed to interpret or waive elements of programs, mechanisms need to be established to ensure that they do not stray from the fundamental goals of those programs and risk undermining political support.

Balancing effectiveness and accountability

It is essential to prioritize effectiveness and accountability, and to strike a balance between the two to find innovations that make programs more efficient without diminishing the need to ensure that taxpayer dollars are not wasted or diverted to unauthorized entities. As described above, those providing political support for SDOH programs will need to be reassured that Federal money is being well spent.

Managing across agencies

Providing flexibility to adapt to emergencies and to promote greater program integration, such as more integrated enrollment or data sharing across programs, may involve addressing cross-agency jurisdictional issues, and require coordinated efforts of multiple Congressional committees of jurisdiction.

RECOMMENDATIONS TO OPTIMIZE USE OF WAIVERS AND PROGRAM FLEXIBILITIES

As we noted above, NASDOH believes that waivers and other program flexibilities can in some cases make federal programs easier for states and beneficiaries to access and help respond to immediate social needs. We offer the following recommendations to policymakers for ways to optimize their use:

1. **Extend waivers to enable recovery.** COVID-19 and its economic impact will be felt for multiple years, and the responses put in place should remain throughout this extended period. For example, school nutrition flexibilities should extend through the full school year, and telehealth payment systems should extend through the period when businesses and workplaces will be fully open.
2. **Evaluate and study.** Agencies should use this extended period to add more rigorous evaluations to programs and expand requirements for states or other program recipients to implement process and outcome measures that can aid further study.
3. **Ensure funding is adequate.** Flexibility alone is not sufficient – programs need to be funded for the duration of the emergency at levels that accommodate the increased need.

4. **Make some waivers permanent.** Select COVID-19 flexibilities and waivers should be made permanent (i.e., not conditioned on the existence of a public health or economic emergency). While this measure will not be appropriate in all cases, where the benefits to the program and its beneficiaries stand out as clearly outweighing the advantage of having in place the program requirements that were waived, Congress and the executive branch should make them permanent.
5. **Study states' use of waivers.** Study how states adopted and implemented flexibilities to better understand whether waivers achieve desired results, and the extent to which additional guardrails are important. This could build on an assessment of how preexisting flexibilities and new authorities/waivers were used in this emergency by individual states or others. It is important to gather more data on the impact of these waivers and understand where program flexibilities were used in ways that jeopardize political support for the programs themselves.
6. **Build on experience with providing flexibilities in eligibility and enrollment to design more permanent, integrated approaches across agencies.** This should start with a rigorous evaluation of the benefits of such flexibilities (e.g., better serving people in need, reducing cost from redundant systems), balanced against an assessment of error and, if appropriate, fraud. Evaluations could be undertaken by the Government Accountability Office (at the request of Congress), by Executive branch organizations like the Council of the Inspectors General on Integrity and Efficiency, or by independent organizations. Those flexibilities that led to greater efficiency and impact without high cost or error should be made permanent and expanded to other programs that would benefit.
7. **Focus on program integration.** Longer-term initiatives can focus on greater program integration, thereby creating a greater “whole-person” approach to Federal SDOH interventions. Consideration should be given to enacting parallel waiver authorities across Federal programs that allow states or other implementing organizations to integrate care across now-separate interventions, which often benefit the same individuals or families.
8. **Consider strategies for responding more quickly to future health and economic emergencies, based on COVID-19 experience and evaluations.** For example, the COVID-19 experience suggests a portfolio of executive actions that can be packaged for rapid implementation in a future emergency.

A public health emergency declaration already gives the Secretary of HHS authority to grant extensions and waive sanctions relating to data reporting requirements, and to waive and modify certain CMS and HIPAA requirements, among other authorities.³ In light of the lessons learned in the era of COVID-19 from a broad use of these authorities and additional ones, Congress could enact a package of legislatively authorized waivers and program flexibilities that could be activated with a defined set of triggers (e.g., a declared Public Health Emergency, Stafford Act disaster declaration, or recession of a defined magnitude). These could form the equivalent of an emergency “go bag,” and potentially include:

³ Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health & Human Services (HHS). November 2019. Public Health Emergency Declaration. <https://www.phe.gov/Preparedness/legal/Pages/phedeclaration.aspx>.

- a. Flexibilities and program expansions found to be the most effective during the COVID pandemic
- b. Temporary relaxation of eligibility/enrollment burdens
- c. Predefined authorities to implement select waivers subject to disapproval of authorizing committees, like the authority many agencies must reprogram appropriated funds.

Conclusion

As this issue brief has discussed, federal health and social programs play a vital role in meeting people's immediate social needs and the broader social determinants of health. NASDOH encourages policymakers to consider our recommendations for how program flexibilities and waivers deployed during the pandemic can be used beyond the COVID-19 public health emergency. The use of waivers and flexibilities is one mechanism that can continue to improve the use and integration of these programs, which are essential for addressing SDOH.

Appendix: Examples of COVID Waivers and Flexibilities

- **Housing Waivers**
 - **The U.S. Department of Housing and Urban Development Housing Choice Voucher Program (HUD HCV) Waivers**

The CARES Act (PL 116-36) allowed HUD to waive and establish alternative requirements for numerous statutory and regulatory requirements for the Public Housing program, Housing Choice Voucher program, Indian Housing Block Grant program, and Indian Community Development Block Grant program.⁴

The waivers vary by state but offer public housing authorities and families increased flexibilities to lower the barriers to enrolling and/or remaining in the HCV program. For example, the Providence Housing Authority (PHA) in Rhode Island has used waivers such as the *Delay of Annual Reexamination*, *Interim Reexamination*, and *Oral Briefing*, which waive requirements for PHAs to use income verification requirements and oral briefings with families, reduce the administrative burden of the HCV Program, and allow families to remain in the program. The waivers safeguard Providence families from losing housing security, an important social determinant of health.⁵

- **Nutrition Waivers**
 - **The U.S. Department of Agriculture's Food and Nutrition Service (USDA FNS) Waivers**

The USDA FNS has issued several waivers that offer regulatory flexibility on how states deliver meals to children, which varies by state. Examples of waivers include the Meal Times Waiver, Meal Pattern Waiver, Non-congregate Feeding Waiver, Fresh Fruit and Vegetable Program (FFVP), Area Eligibility Summer Food Service Program (SFSP)/Seamless Summer Options (SSO), and Pandemic Electronic Benefits Transfer (P-EBT) program.⁶

States and localities have taken advantage of these waivers to ensure that school children maintain access to meals during the pandemic. In Ohio, the Cincinnati Public Schools (CPS) provide additional meals at no charge to students. In addition to the breakfast and lunch served to CPS students at schools with in-school days, CPS offers meal packs to students on Wednesdays and Fridays with three breakfasts, three lunches, and four weekend snack packs. For students in schools with no in-person days, CPS offers meal packs on Wednesdays with five breakfasts, five lunches, and four weekend snack packs. At these sites, any child under age 18, regardless of school status, may pick up meal packs.⁷ The waivers provide CPS with the opportunity to offer more food to more children, reduce the threat of food insecurity in Cincinnati, and minimize potential health impacts.

⁴ Office of Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD). April 2020. COVID-19 Statutory and Regulatory Waivers for Public Housing. <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2020-05.pdf>.

⁵ Providence Housing Authority. July 2020. COVID-19 Waivers Being Used by PHA. <https://provhousing.org/covid19-waivers/>.

⁶ Trust for America's Health. July 2020. Beyond School Walls: How Federal, State, and Local Entities and Adapting Policies to Ensure Student Access to Healthy Meals During the COVID-19 Pandemic. <https://www.tfah.org/wp-content/uploads/2020/07/SchoolNutritionPolicyBrief.pdf>.

⁷ Cincinnati Public Schools (CPS). November 2020. CPS Continuing to Provide Breakfast, Lunches. <https://www.cps-k12.org/news/whats-new/cps-continuing-provide-breakfasts-lunches-during-distance-learning>.

- **The U.S. Department of Agriculture’s Food and Nutrition Service (USDA FNS) Supplemental Nutrition Assistance Program (SNAP) Waivers**

The USDA FNS has issued waivers for its SNAP program, which vary by state. Examples of waivers include the Waiver of Quality Control (QC) Face-to-Face Interview Requirement, Flexibility to Allow Telephone Interviews in Lieu of Face-to-Face Interviews for Quality Control Case Reviews, Suspension of the time limit for Able-Bodied Adults Without Dependents (ABAWD) participation in the Supplemental Nutrition Program (SNAP), and Pandemic Electronic Benefits Transfer (P-EBT) program.⁸

The waivers reduce the administrative burden to carry out the SNAP program and waive requirements in order to make it easier for individuals to access and maintain the assistance they need. For example, in Tennessee, families with children who receive free or reduced price school meals or attend Community Eligibility Provision (CEP) schools can receive Pandemic EBT (P-EBT) benefits with the current waivers to help alleviate the impact of missed school meals. Moreover, the state has suspended the 3-month limit to SNAP for ABAWDs, ensuring access to healthy foods for adults who face financial burdens. SNAP waivers offer improved access to healthy foods for children and adults in Tennessee, and in turn reduce the adverse impact of poor food quality on health.⁹

- **Income Flexibilities**

- **The U.S. Department of Labor Unemployment (DOL) Insurance Relief and Other Income Assistance During COVID-19 through the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act Flexibilities**

The FFCRA and CARES Act offer several flexibilities, which vary by state. Examples of flexibilities include the Pandemic Unemployment Assistance (PUA) program, the Pandemic Emergency Unemployment Compensation (PEUC) program, and the Federal Pandemic Unemployment Compensation (FPUC) program for individuals who collect regular unemployment compensation (UC).¹⁰

The FFCRA provides additional flexibility for state unemployment insurance agencies and additional administrative funding for the COVID-19 pandemic response. The CARES Act expands states’ ability to provide unemployment insurance for workers impacted by the COVID-19 pandemic, including those not normally eligible for unemployment benefits. In Texas, the PUA provides a \$600 benefit per week for up to 39 weeks for Texans who are self-employed, seeking part-time employment, or who otherwise would not qualify for regular unemployment compensation. In addition, the FPUC provides an additional \$600 per week to Texans who receive UC. Income plays a particularly influential role on

⁸ Food and Nutrition Service, U.S. Department of Agriculture (USDA). July 2020. Supplemental Nutrition Assistance Program (SNAP): SNAP COVID-19 Waivers. <https://www.fns.usda.gov/programs/fns-disaster-assistance/fns-responds-covid-19/snap-covid-19-waivers>.

⁹ Tennessee Justice Center (TJC). 2020. Supplemental Nutrition Assistance Program: SNAP Resources. <https://www.tnjustice.org/snap/>.

¹⁰ U.S. Department of Labor. 2020. Unemployment Insurance Relief During COVID-19 Outbreak. <https://www.dol.gov/coronavirus/unemployment-insurance>.

health outcomes. By offering Texans financial assistance during economically unstable times, these benefits reduce the impact of low income on health.¹¹

¹¹Texas Workforce Commission. April 2020. Pandemic Unemployment Assistance (PUA) and \$600 in Federal Pandemic Unemployment Compensation Available for Eligible Workers. <https://www.twc.texas.gov/news/pandemic-unemployment-assistance-and-600-federal-pandemic-unemployment-compensation-available-eligible-workers>.

ABOUT NASDOH

The National Alliance to impact the Social Determinants of Health (NASDOH) is a group of stakeholders working to systematically and pragmatically build a common understanding of the importance of addressing social needs as part of an overall approach to health improvement and economic vitality of families and communities. The Alliance brings together health care, public health and social services expertise, local community experience, community-convening competence, business and financial insight, technology innovation, data and analytics competencies, and policy and advocacy acumen to assess and address current regulatory frameworks, funding environments and opportunities, and practical challenges to implementing and sustaining social determinants of health efforts. We seek to make a material improvement in the health of individuals and communities and, through multi-sector partnerships within the national system of health, to advance holistic, value-based, person-centered health care that can successfully impact the social determinants of health. To learn more, visit us at NASDOH.org.

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